IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20623 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SUDHABEN W/O.RAJUBHAI MAGANBHAI KOLI PATEL - Petitioner(s)

Versus

COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)

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Appearance :

MS BANNA S DUTTA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/12/2005

ORAL JUDGMENT

1.Sudhaben W/o. Rajubhai Maganbhai Koli Patel, petitioner-detenu has filed this habeas corpus petition under Article 226 of the Constitution of India

challenging the order of detention dated 9/9/2005 passed by the Police Commissioner, Surat, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. Petition was filed on 6/10/2005. This Court has issued Rule on 11/10/2005 which was returnable after four weeks. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has filed affidavit of Mr.Sudhir Sinha. Therefore, with consent of the parties, matter has been taken up for final hearing.

2. The learned advocate for the petitioner has invited my attention to the order of detention dated 9/9/2005 passed by the detaining authority under the provisions of PASA Act. The learned counsel has also invited my attention to the order of committal dated 9/9/2005. Though order was passed on 9/9/2005, detenu has been detained on 5/10/2005. He has also invited my attention to the grounds of detention furnished by the detaining authority to the petitioner-detenu dated 9/9/2005 in this behalf. The learned advocate has stated that from the grounds of detention, it revels that petitioner-detenu has committed offence at Kapodra Police Station in connection with CR No.521 of 2005

dated 14/6/2005 under Section 66(B), 65(E) and 81 of the Bombay Prohibition Act. It is alleged that petitioner has stored 1045 (one thousand and forty five) bottles of country made liquor valued at Rs.31,350/-.

3. It was also alleged that petitioner is doing anti-social activities as carrying on business of liquor and therefore, he is a 'bootlegger' under the provisions of PASA Act.

4. The learned counsel for the petitioner has submitted that the authority could not passed the said order. The authority has not arrived at subjective satisfaction for detaining the petitioner-detenu under the provisions of PASA Act. The authority has only furnished grounds of solitary incident. It is the offence under Prohibition Act and therefore, there is no question of violation of public order. There may be only violation of law and order situation. For the same, the learned advocate for the petitioner-detenu has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989 SC 491, Division Bench judgment of this Court

(Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000, another judgment of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.), reported in 2000 (1) GLR 816 in the case of Ashokbhai Jivrajbhai v. Police Commissioner. The learned counsel for the petitioner has also relied upon judgment of this Court (Coram: K.M.Mehta, J) in Special Civil Application No.20420 of 2005 decided on 15/11/2005.

5. The On behalf of the respondents, Mr.L.R.Pujari, learned APP appears. He has relied upon order of detention as well as grounds of detention in this behalf. He has also relied upon the affidavit filed by Sudhir Sinha. In the affidavit, it is stated that the authority has after subjectively satisfied with the material placed before the authority and then passed an order of detention after carefully considering the same and therefore, order of detention is properly passed by the authority.

6. Having heard the learned counsel for both the parties,

in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division bench Judgment of this Court (Coram: M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. no.554 of 2000 in case of Ashok Balabhai Makwana and another judgment of this Court (Coram: C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes or the activities of bootlegging of the detenu. There has to be nexus and link for such activities with

disturbance of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Supreme Court in Piyush Kantilal Mehta (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the

petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. In my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Sudhaben W/o. Rajubhai Maganbhai Koli Patel, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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